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SALOMON FRIAS

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

09/28/2022 at 02:39:00 PM
Clerk of the Superior Court
By Taylor Crandall, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

SALOMON FRIAS, on behalf of himself and
all others similarly situated,

Plaintiff,

vs.

POUR SPORTS, LLC, a California limited
liability company; DEEDEE KELLY, an
individual; and DOES 1–50, inclusive,

Defendants.

Case No. 37-2022-00014226-CU-OE-CTL
[Assigned for All Purposes to the
Honorable Richard S. Whitney of
Department C-68]

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Unfair Competition
(Bus. & Prof. Code § 17200 *et seq.*);
2. Non-Provision of Meal and Rest Periods
(Lab. Code § 226.7);
3. Unpaid Minimum and Overtime Wages
(Lab. Code § 1194);
4. Wage Statement Penalties
(Lab. Code § 226);
5. Waiting Time Penalties
(Lab. Code § 203); and
6. Civil Penalties
(Lab. Code § 2698 *et seq.*)

Action Filed: April 15, 2022

JURY TRIAL DEMANDED

1 Plaintiff Salomon Frias (hereafter, “Plaintiff”), on behalf of himself and all others
2 similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. This is a class and representative private attorney general action against
5 Defendants Pour Sports, LLC, DeeDee Kelly, and Does 1–50, inclusive (collectively,
6 “Defendants”) for violations of the Labor Code, Industrial Welfare Commission Order 5-2001
7 (hereafter, the “Wage Order”), and the Business and Professions Code arising out of Defendants’
8 alleged wage and hour violations. As set forth below, Defendants have, as matters of policy and/or
9 practice, failed to provide meal and rest periods to their hourly workers, failed to pay them
10 premium wages, required them to perform work before clocking in and/or after clocking out from
11 work, failed to provide them with accurate written wage statements, and failed to timely pay them
12 all of their earned and unpaid wages upon separation of employment. Consequently, Plaintiff now
13 seeks restitution of unpaid wages and related relief on behalf of himself and all other similarly
14 situated current and former employees of Defendants.

15 **JURISDICTION AND VENUE**

16 2. This Court has subject matter jurisdiction to hear this case in that the amount in
17 controversy in this case, exclusive of costs and attorneys’ fees, exceeds \$25,000.

18 3. Venue is proper in the County of San Diego under Code of Civil Procedure
19 §§ 395(a) and 395.5 because the events giving rise to liability in this action arose in the County of
20 Los Angeles in that at least some of the transactions that are the subject matter of this Complaint
21 occurred therein and/or because each defendant either is found, maintains offices, transacts
22 business, and/or has an agent therein.

23 **THE PARTIES**

24 4. Plaintiff incorporates each of the preceding paragraphs of this Complaint by
25 reference as if fully set forth herein.

26 5. Plaintiff Salomon Frias is an individual who, at relevant times, was employed by
27 Defendants in the County of San Diego, California on an hourly basis during the period from
28 approximately September 1, 2016 to approximately April 20, 2021, when Plaintiff resigned from

1 his employment.

2 6. Plaintiff is informed and believes and thereon alleges that Defendant Pour Sports,
3 LLC is a limited liability company organized under California law that employs persons and does
4 business in San Diego County, California.

5 7. Plaintiff is informed and believes and thereon alleges that Defendant DeeDee
6 Kelly is an individual who employs persons and does business in San Diego County, California.

7 8. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
8 participation in the conduct alleged herein, of the defendants sued as Does 1–50, inclusive, but is
9 informed and believes and thereon alleges that said defendants are legally responsible for the
10 wrongful conduct alleged herein and therefore sues these defendants by such fictitious names.

11 9. Plaintiff will amend this Complaint to allege the true names and capacities of the
12 Doe defendants when ascertained.

13 10. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
14 Defendant DeeDee Kelly has been an owner of Defendants, overseen all administrative functions
15 of Defendants, including payroll and labor and employment policies, and has had Defendants
16 maintain books and records under her direction.

17 11. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
18 each of the Defendants has been a “person” within the meaning of Labor Code § 18.

19 12. Plaintiff is informed and believes that each of the Defendants is either an
20 “employer” or a “person acting on behalf of an employer” within the meaning of Labor Code
21 §§ 558 and 558.1 so as to render each of the Defendants liable for violations of Labor Code
22 §§ 203, 226, 226.7, and 1194.

23 13. Plaintiff is informed and believes and thereon alleges that each of the Defendants
24 has acted as an employer and/or joint employer of Plaintiff and class members within the meaning
25 of Section 2(H) of the Wage Order.

26 14. Plaintiff is informed and believes and thereon alleges that each of the Defendants
27 has acted in all respects pertinent to this action as the agent or employee of the other Defendants,
28 carried out a joint scheme, business plan, or policy in all respects hereto, and therefore the acts of

each of the Defendants are legally attributable to the other Defendants.

15. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, except as otherwise indicated, Defendants have been the agents, employees and/or servants, masters or employers of the remaining Defendants, and in doing the things hereinafter alleged, have been acting within the course and scope of such agency or employment, and with the approval and ratification of each of the other Defendants.

16. Plaintiff is informed and believes and thereon alleges that, at all relevant times, and except as otherwise indicated, each and every one of the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other Defendants, and that said acts and failures to act have been within the course and scope of said agency, employment, and/or direction and control.

17. Plaintiff is informed and believes and thereon alleges that, at all relevant times, in perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to and in furtherance of policies and practices that constitute unfair competition in violation of the Business and Professions Code and violate the requirements of the Labor Code and the Wage Order.

CLASS ACTION ALLEGATIONS

18. Plaintiff incorporates each of the preceding paragraphs of this Complaint by reference as if fully set forth herein.

19. Plaintiff brings this action on behalf of himself and the following class and subclasses pursuant to Code of Civil Procedure § 382:

A. **Plaintiff Class:** All hourly or non-exempt employees of Defendants in California during the period beginning four years before the filing of this action and ending when final judgment is entered.

B. **Former Employee Subclass:** All **Plaintiff Class** members who voluntarily or involuntarily separated from their employment with Defendants during the period beginning three years before the filing of this

1 action and ending when final judgment is entered.

- 2 C. **Penalties Subclass:** All **Plaintiff Class** members who have been
3 employed by Defendants during the period beginning one year before the
4 filing of this action and ending when final judgment is entered.

5 20. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
6 right to amend or modify the class definitions with greater specificity, by further division into
7 subclasses, and/or by limitation to particular issues. In addition, Plaintiff reserves the right to
8 pursue the cause of action for civil penalties under the Labor Code Private Attorneys General Act
9 of 2004 in a representative capacity without complying with Code of Civil Procedure § 382.

10 21. **Numerosity:** Class members are so numerous that the individual joinder of each
11 class member is impractical. While Plaintiff does not currently know the exact number of class
12 members, he is informed and believes and thereon alleges that the actual number exceeds the
13 minimum number required for numerosity purposes under Code of Civil Procedure § 382.

14 22. **Predominant Common Questions:** Common questions of law and fact exist as
15 to all class members and predominate over any questions that only affect individual class
16 members. These questions include, but are not limited to:

- 17 A. Whether Defendants, as matters of policy and/or practice, have failed to
18 authorize and permit net rest periods for **Plaintiff Class** members of ten
19 minutes for each four-hour work period, or major fraction thereof?
- 20 B. Whether Defendants, as matters of policy and/or practice, have failed to
21 provide first duty-free meal periods for **Plaintiff Class** members of thirty
22 minutes after no more than five hours of work?
- 23 C. Whether Defendants, as matters of policy and/or practice, have failed to
24 provide second duty-free meal periods for **Plaintiff Class** members of
25 thirty minutes after no more than ten hours of work?
- 26 D. Whether Defendants, as matters of policy and/or practice, have failed to
27 establish a mechanism for the payment of premium wages to **Plaintiff**
28 **Class** members when a timely meal or rest period is not provided?

- 1 E. Whether Defendants are liable to **Plaintiff Class** members for premium
2 wages under Labor Code § 226.7?
- 3 F. Whether Defendants, as matters of policy and/or practice, have required
4 **Plaintiff Class** members to perform opening duties before clocking in?
- 5 G. Whether Defendants, as matters of policy and/or practice, have required
6 **Plaintiff Class** members to perform closing duties after clocking out?
- 7 H. Whether Defendants have systematically failed to pay earned and unpaid
8 wages to **Former Employee Subclass** members within the times set forth
9 in Labor Code §§ 201-202 as a result of failing to pay them minimum,
10 overtime, and/or premium wages?
- 11 I. Whether Defendants failures to pay minimum, overtime, and/or premium
12 wages to **Former Employee Subclass** members have been willful so as to
13 render them liable for waiting time penalties under Labor Code § 203?
- 14 J. Whether Defendants are liable to **Penalties Subclass** members for
15 statutory penalties under Labor Code § 226(e)?

16 23. **Typicality:** Plaintiff's claims are typical of class members' claims in that
17 Defendants have policies and practices that violate the Labor Code, Wage Order, and Business
18 and Professions Code as alleged herein that enable him to seek the same relief as they could seek
19 under the same theories of recovery and to which Defendants may attempt to assert the same
20 affirmative defenses.

21 24. **Adequacy of Representation:** Plaintiff will fairly and adequately represent and
22 protect the interests of class members in that he has no interests that are adverse to theirs and is
23 represented by counsel experienced in employment and wage and hour class action litigation.

24 25. **Superiority:** A class action is superior to other available means for fair and
25 efficient adjudication of class members' claims and offers significant benefits to the parties and
26 the court. A class action will allow a number of similarly situated persons to simultaneously and
27 efficiently prosecute their common claims in a single forum without the unnecessary duplication
28 of effort and expense that numerous individual actions would entail. The monetary amounts due

1 to many class members are likely to be relatively small, thus making it difficult, if not impossible,
2 for individual class members to seek and obtain relief. Moreover, a class action will serve
3 important public interests by enabling the non-waivable statutory rights of class members to be
4 effectively asserted, and fundamental public policies to be vindicated, in one proceeding. A class
5 action will also provide a means for vindicating the rights of current employees who are less likely
6 to come forward to assert those rights based on fears of employer reprisal. Finally, a class action
7 will prevent the potential for inconsistent or contradictory judgments inherent in individual
8 litigation and address the problems inherent in random and fragmentary enforcement.

9 **FIRST CAUSE OF ACTION**

10 **UNFAIR COMPETITION**

11 **(Bus. & Prof. Code § 17200 *et seq.*)**

12 **(By Plaintiff and the Plaintiff Class)**

13 26. Plaintiff incorporates each of the preceding paragraphs of this Complaint by
14 reference as if fully set forth herein.

15 27. Business and Professions Code § 17200 defines “unfair competition” to include
16 any unlawful, unfair, and/or fraudulent business act or practice.

17 28. Business and Professions Code §§ 17203-17204 allow a person who has lost
18 money or property as a result of unfair competition to bring a class action in accordance with
19 Code of Civil Procedure § 382 to recover money or property that may have been acquired from
20 similarly situated persons by means of unfair competition.

21 29. At all relevant times, Defendants have employed Plaintiff and **Plaintiff Class**
22 members as non-exempt employees in the public housekeeping industry, thus entitling them to
23 the full benefits and protections of the Labor Code and the Wage Order.

24 30. Collectively, Labor Code §§ 226.7, 512, and 1198, and Sections 7 and 11 of the
25 Wage Order require employers to provide a first meal period of at least thirty minutes to non-
26 exempt employees who work shifts of at least five hours after no more than five hours of work,
27 to provide a second meal period of at least thirty minutes to non-exempt employees who work
28 shifts of more than ten hours after no more than ten hours of work, and to pay premium wages

1 when required meal periods are not provided. As relevant here, absent valid on-duty meal period
2 agreements, employers must maintain records of meal period start and stop times, completely
3 relieve their non-exempt employees of duty, relinquish control over them, and permit them to
4 come and go as they please during the meal period to discharge the duty to provide meal periods.

5 31. Collectively, Labor Code §§ 226.7 and 1198, and Section 12 of the Wage Order
6 require employers to authorize and permit net rest periods of at least ten minutes for each four
7 hour work period, or major fraction thereof, to make good faith efforts to provide said rest periods
8 during the middle of each work period, and to pay premium wages when required rest periods are
9 not provided.

10 32. Collectively, Labor Code §§ 226(a), 510, 1174, 1194, 1197, and 1198, and
11 Sections 3, 4, and 7 of the Wage Order require an employer to pay a non-exempt employee no
12 less than minimum wage for each hour worked (see *Armenta v. Osmose, Inc.* (2005) 135
13 Cal.App.4th 314), no less than one and one-half times the employee's regular rate of pay for all
14 hours worked in excess of 8 hours in one workday, in excess of 40 hours in one workweek, and
15 for the first 8 hours worked on a seventh consecutive workday, and at no less than twice the
16 employee's regular rate of pay for all hours worked in excess of 12 hours in a workday and/or in
17 excess of 8 hours on a seventh consecutive workday, and to maintain accurate records of all hours
18 worked by the employee.

19 33. Plaintiff is informed and believes and thereon alleges that, all relevant times,
20 Defendants have violated the above-referenced laws as matters of policy and/or practice by,
21 among other things:

22 A. Failing to provide Plaintiff and **Plaintiff Class** members with timely first
23 meal periods of at least thirty minutes when they worked shifts of five or
24 more hours by not maintaining any policy providing for first meal periods
25 after no more than five hours of work, not scheduling first meal periods
26 after no more than five hours of work, not providing complete relief from
27 duty for at least thirty minutes after no more than five hours of work,
28 requiring employees to remain clocked in without being relieved from duty

- 1 and not keeping accurate records of breaks, and by maintaining staffing
2 levels that do not reasonably permit for timely off-duty first meal periods;
- 3 B. Failing to provide Plaintiff and **Plaintiff Class** members with timely
4 second meal periods of at least thirty minutes when they worked shifts of
5 more than ten hours by not maintaining any policy providing for second
6 meal periods after no more than ten hours of work, not scheduling second
7 meal periods after no more than ten hours of work, not providing complete
8 relief from duty for at least thirty minutes after no more than ten hours of
9 work, requiring employees to remain clocked in without being relieved
10 from duty and not keeping accurate records of breaks, and by maintaining
11 staffing levels that do not reasonably permit for timely off-duty second
12 meal periods;
- 13 C. Not paying Plaintiff and **Plaintiff Class** members premium wages on
14 workdays of five or more hours when they have not been provided with
15 one or more meal periods;
- 16 D. Failing to provide Plaintiff and **Plaintiff Class** members with paid rest
17 periods when they worked shifts of 3.5 or more hours by not maintaining
18 any policy providing for rest periods in the manner and number required
19 under the Wage Order, not scheduling rest periods, not providing relief
20 from duty for rest periods, not making good faith efforts to provide rest
21 periods in the middle of each four-hour work period, and by maintaining
22 staffing levels that prevent or otherwise impede timely rest periods;
- 23 E. Not paying Plaintiff and **Plaintiff Class** members premium wages on
24 workdays of three and one-half or more hours when they have not been
25 provided with one or more rest periods;
- 26 F. Requiring Plaintiff and **Plaintiff Class** members to perform opening duties
27 without being paid before clocking into work;

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G. Requiring Plaintiff and **Plaintiff Class** members to perform closing duties without being paid after clocking out from work;

34. As a result of Defendants' violations of the Labor Code and the Wage Order set forth above, Plaintiff has lost money or property by means of unfair competition and Defendants have, or may have, acquired money or property from **Plaintiff Class** members by means of unfair competition.

35. Pursuant to Business and Professions Code §§ 17203-17204, Plaintiff, on behalf of himself and the **Plaintiff Class**, seeks an order awarding restitution of all earned and unpaid wages and gratuities that Defendants acquired, or may have acquired, by means of unfair competition in amounts subject to proof.

36. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and the **Plaintiff Class**, seeks reasonable costs and attorneys' fees in amounts subject to proof.

SECOND CAUSE OF ACTION

NON-PROVISION OF MEAL AND REST PERIODS

(Lab. Code § 226.7)

(By Plaintiff and the Plaintiff Class)

37. Plaintiff incorporates each of the preceding paragraphs of this Complaint by reference as if fully set forth herein.

38. Pursuant to Labor Code § 226.7, Plaintiff seeks to recover premium wages on behalf of himself and **Plaintiff Class** members in amounts subject to proof.

39. Pursuant to Code of Civil Procedure § 1021.5 and Labor Code §§ 218.5 and 218.6, the substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and the **Plaintiff Class**, seeks awards of reasonable attorneys' fees and costs in amounts subject to proof.

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1 **THIRD CAUSE OF ACTION**

2 **FAILURES TO PAY MINIMUM AND OVERTIME WAGES**

3 **(Lab. Code § 1194)**

4 **(By Plaintiff and the Plaintiff Class)**

5 40. Plaintiff incorporates each of the preceding paragraphs of this Complaint by
6 reference as if fully set forth herein.

7 41. Pursuant to Labor Code § 1194 and 1194.2, Plaintiff, on behalf of himself and
8 **Plaintiff Class** members, seeks unpaid minimum and overtime wages, liquidated damages in an
9 amount equal to the unpaid minimum wages, interest thereon, and awards of reasonable costs and
10 attorneys' fees, all in amounts subject to proof.

11 **FOURTH CAUSE OF ACTION**

12 **WAITING TIME PENALTIES**

13 **(Lab. Code § 203)**

14 **(By Plaintiff and the Former Employee Subclass)**

15 42. Plaintiff incorporates each of the preceding paragraphs of this Complaint by
16 reference as if fully set forth herein.

17 43. Labor Code § 201 makes all of the earned and unpaid wages of a discharged
18 employee immediately due and payable at the time of discharge.

19 44. Labor Code § 202 makes all of the earned and unpaid wages of an employee who
20 quits after giving less than 72 hours previous notice within 72 hours of quitting.

21 45. Labor Code § 202 also makes all of the earned and unpaid wages of an employee
22 who quits after giving at least 72 hours previous notice at the time of quitting.

23 46. Labor Code § 203 entitles an employee to an additional day of wages as a penalty
24 for each day that wages remain unpaid, for up to a maximum of thirty days, where the employer
25 willfully fails to pay timely earned wages in compliance with § 201 or § 202.

26 47. Plaintiff is informed and believes and thereon alleges that Defendants have failed
27 to pay Plaintiff all of his earned and unpaid wages within the times set forth in Labor Code § 202
28 both as a result of failing to issue him a timely final paycheck and as a result of failing to pay him

1 all of his earned and unpaid minimum, overtime, and premium wages.

2 48. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
3 Defendants have failed to timely pay **Former Employee Subclass** all of their earned and unpaid
4 wages in violation of Labor Code § 201 or § 202 as a result of not timely issuing them final
5 paychecks and/or and as a result of failing to pay them all of their earned and unpaid minimum,
6 overtime, and premium wages.

7 49. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
8 Defendants' failures to timely pay Plaintiff and **Former Employee Subclass** members have been
9 willful in that, at all relevant times, Defendants have had the ability to comply with the above-
10 referenced laws concerning payments of minimum, overtime, and premium wages, and the timing
11 of wage payments but have deliberately maintained policies and practices in violation of the
12 requirements of the Labor Code and the Wage Order.

13 50. Pursuant to Labor Code § 203, Plaintiff, on behalf of himself and the **Former**
14 **Employee Subclass**, seeks up to a maximum of thirty days of waiting time penalties for each
15 subclass member in amounts subject to proof.

16 **FIFTH CAUSE OF ACTION**

17 **WAGE STATEMENT PENALTIES**

18 **(Lab. Code § 226)**

19 **(By Plaintiff and the Penalties Subclass)**

20 51. Plaintiff incorporates each of the preceding paragraphs of this Complaint by
21 reference as if fully set forth herein.

22 52. Pursuant to Labor Code § 226(a), Defendants have been obliged to provide
23 Plaintiff and **Penalties Subclass** members, either semimonthly or at the time of each payment of
24 wages, accurate itemized written wage statements showing, among other things, each applicable
25 wage rate, the number of hours worked at each applicable wage rate, and amounts of gross and
26 net wages earned.

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1 53. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
2 Defendants have failed to provide Plaintiff and **Penalties Subclass** members with accurate
3 written wage statements by providing them with wage statements that fail to accurately reflect,
4 among other things, all of their applicable wage rates by providing them with written wage
5 statements that do not accurately state their total hours worked and amounts of gross and net
6 wages earned as a result of the wage and hour violations set forth herein.

7 54. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
8 Defendants' failures to provide him and **Penalties Subclass** members with accurate wage
9 statements have been knowing and intentional, in that Defendants have, at all relevant times, had
10 the ability to provide them with accurate wage statements but, instead, have deliberately
11 maintained unlawful wage and hour policies with respect to timekeeping and meal and rest
12 periods so as to result in inaccurate wage statements.

13 55. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
14 Plaintiff and **Penalties Subclass** members have suffered injuries due to Defendants' failures to
15 provide them with accurate written wage statements in that, among other things, their legal rights
16 to receive accurate wage statements have been violated, they have been misled about the amounts
17 of wages they have earned, they have been prevented from immediately challenging allegedly
18 unlawful pay practices, have needed to reconstruct time and pay records and perform
19 mathematical computations to determine the amounts of wages they have earned, have been
20 unable to verify if they have been properly paid based on the information provided on their written
21 wage statements, and/or have had inaccurate information about their wages and deductions
22 submitted to government agencies,.

23 56. Pursuant to Labor Code § 226(e), Plaintiff, on behalf of himself and the **Penalties**
24 **Subclass**, seeks to recover the greater of actual damages or \$50 for the initial pay period in which
25 a § 226(a) violation occurred, the greater of actual damages or \$100 for each violation of § 226(a)
26 in a subsequent pay period, up to the greater of actual damages or an aggregate \$4,000 penalty
27 per subclass member, as well as awards of reasonable attorneys' fees and costs, all in amounts
28 subject to proof.

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1 59. Defendants paid wages to employees on regular intervals. Defendants failed to pay
2 Plaintiff on such intervals for all wages earned and all hours worked. On information and belief,
3 Plaintiff alleges that Defendants also failed to pay the aggrieved employees on such intervals for
4 all wages earned and all hours worked.

5 60. During the applicable time period, Defendants violated Labor Code §§ 201, 202,
6 203, 204, 226, 226.7, 510, 512, 1194, 1197, and 1198.

7 61. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of
8 themselves and other current or former employees, to bring a civil action to recover civil penalties
9 pursuant to the procedures specified in California Labor Code § 2699.3.

10 62. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and aggrieved
11 employees are entitled to recover civil penalties for each of the Defendants' violations of Labor
12 Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, and 1198 during the applicable
13 limitations period in the following amounts:

14 A. For violations of Labor Code § 204, one hundred dollars (\$100.00) for each
15 aggrieved employee for each initial violation and two hundred dollars (\$200.00) for each
16 aggrieved employee for each subsequent, willful or intentional violation (penalty amounts
17 established by Labor Code § 210).

18 B. For violations of Labor Code § 226(a), two hundred fifty dollars (\$250.00)
19 for each aggrieved employee for initial violation and one thousand dollars (\$1,000.00) for each
20 aggrieved employee for each subsequent violation (penalty amounts established by Labor Code
21 § 226.3).

22 C. For violations of Labor Code §§ 510 and 512, fifty dollars (\$50.00) for
23 each aggrieved employee for initial violation and one hundred dollars (\$100.00) for each
24 aggrieved employee for each subsequent violation, per pay period in addition to an amount
25 sufficient to recover underpaid wages (penalty amounts established by Labor Code § 558).

26 D. For violations of Labor Code § 1197 one hundred dollars (\$100.00) for
27 each aggrieved employee per pay period for each initial violation and two hundred fifty dollars
28 (\$250.00) for each aggrieved employee per pay period for each subsequent violation (penalty
amounts established by Labor Code § 1197.1).

 E. For violations of Labor Code §§ 201, 202, 203, 226.7, 1194 and 1198 one

1 hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial violation
2 and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each
3 subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

4 63. Plaintiff has complied with the procedures for bringing suit specified in California
5 Labor Code § 2699.3. By letter dated April 15, 2022, Plaintiff filed written notice online with the
6 Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified mail
7 to Defendants of the specific provisions of the Labor Code alleged to have been violated,
8 including the facts and theories to support the alleged violations. Plaintiff accompanied his
9 LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in response
10 within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff anticipates that the LWDA
11 will provide written notice to Plaintiff informing him that it does not intend to investigate these
12 allegations.

13 64. Pursuant to Labor Code § 2699(g), Plaintiff and the aggrieved employees are
14 entitled to an award of civil penalties, reasonable attorney’s fees and costs in connection with
15 their claims for civil penalties.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for
18 relief and judgment against Defendants as follows:

- 19 A. An order that the action be certified as a class action;
20 B. An order that Plaintiff be appointed class representative;
21 C. An order that counsel for Plaintiff be appointed class counsel;
22 D. Damages;
23 E. Restitution;
24 F. Declaratory relief;
25 G. Statutory penalties;
26 H. Civil penalties;
27 I. Pre-judgment interest;
28 J. Post-judgment interest;

- 1 K. Costs of suit;
2 L. Reasonable attorney's fees; and
3 M. Such other relief as the Court deems just and proper.

4 **DEMAND FOR JURY TRIAL**

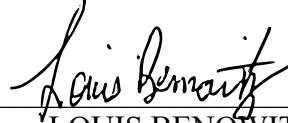
5 Plaintiff, on behalf of himself and all others similarly situated, hereby demands a trial by
6 jury on all issues so triable.

7 Respectfully submitted,

8 BENOWITZ LAW CORPORATION

9
10 Dated: September 28, 2022

BY



11 LOUIS BENOWITZ
12 Attorneys for Plaintiff
13 SALOMON FRIAS
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